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FEDERAL COMMUNICATIONS COMMISSION
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RM-8221

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 21 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendments of Parts 32, 36, 61,)
64 and 69 of the Commission's Rules)
to Establish and Implement Regulatory)
Procedures for Video Dialtone Service)

RM-8221

**COMMENTS OF CALIFORNIA CABLE TELEVISION ASSOCIATION
IN SUPPORT OF CFA/NCTA
JOINT PETITION FOR RULEMAKING AND
REQUEST FOR ESTABLISHMENT OF A JOINT BOARD**

The California Cable Television Association ("CCTA") supports the joint petition by the Consumer Federation Association ("CFA") and the National Cable Television Association ("NCTA") for the FCC to begin a rulemaking to establish cost allocation rules for video dialtone service, and for the establishment of a Federal/State Joint Board to recommend procedures for separating the cost of local telephone company plant that is used jointly to provide telephone service and video dialtone.

The CFA/NCTA petition contains many examples in the pending video dialtone applications before the FCC that would, if granted, force basic telephone ratepayers to bear the cost of millions of dollars of fiber optic lines that are planned to be installed for video services. CFA/NCTA demonstrates that any safeguards that are developed on a case by case basis cannot adequately address the much broader problems that will occur any

time a telephone company attempts to enter the area of video distribution.

The most fundamental question to be answered is the proper allocation of costs between video and telephone service. CCTA has raised this issue before the FCC in numerous contexts, pointing to California examples. It has filed comments addressing this point on the still-pending petitions for reconsideration of the FCC's video dialtone order.^{1/} CCTA has also filed comments addressing these issues on the still-pending remand of the waiver granted in 1989 that allowed GTE to provide

application, as was detailed in the opposing comments that were filed by several parties, dramatically demonstrated the potential for cross-subsidy of the cable television service by telephone ratepayers.

Cross-subsidy was apparent in Contel's proposal to allocate 50 percent of the cost of the system to telephone ratepayers and 50 percent to cable television users. This allocation was totally arbitrary, without any justification in Contel's application. If the allocation had been based on bandwidth, the cable signals carried would have utilized 216,000 times the bandwidth of the telephone signals. If average use were the basis, the ratio in the Contel proposal would still have been over 20 to 1.

The cost allocation issue has also been raised at both the federal level and before the California PUC concerning Pacific Bell's request in the mid-1980s for authorization to construct a "leaseback" video transport cable system for an independent cable operator in Palo Alto, California, which was challenged by Century Federal, a competitor of the operator leasing the Pacific Bell facility. Century Federal asserted that Pacific Bell would be offering the facility to the competitor at an uneconomic rate.

The Common Carrier Bureau Order that resulted from the Section 214 process required:

"... Pacific to maintain separate books of account for its broadband channel service to assure that any cross-subsidization will be apparent."^{4/}

The Section 214 process was used to establish this separate safeguard and provide the FCC an audit trail.^{5/}

After the project was completed, CCTA received information that the construction costs for this project had in fact vastly exceeded Pacific Bell's estimate.^{6/} Pacific Bell never increased its tariff rates. Thus, even though in theory the Section 214 process had established a "safeguard," Pacific Bell's conduct still injured competitors.

The FCC ultimately conducted an audit of the leaseback

that underpricing was in fact found by the Bureau, and some form of corrective Commission action was initiated. This, however, has not been made public, which has led to significant harm to California ratepayers, as demonstrated below.

Subsequently, in connection with ongoing proceedings before the California Public Utilities Commission, CCTA has discovered that Pacific Bell, despite very clear directives from the FCC, has flaunted the FCC order that it segregate all Palo Alto expenses from telephone ratepayer accounts. During hearings on depreciation rates before the CPUC, Pacific Bell sought to include the sale of the Palo Alto cable TV plant as an adjustment

setting the appropriate depreciation rates for the accounts at issue.^{8/}

This example illustrates that the issue of the proper allocation of the costs of video service by telephone companies is of interest and importance not only at the federal level, but also at the state public utilities commission level.

In fact, the California PUC has already filed a Petition For Reconsideration last fall in the FCC's video dialtone docket, which CCTA supported, urging that the FCC address an early stage cost allocation between video and non-video services. The CPUC stated that important federal/state cost separations issues must be dealt with before video dialtone services are permitted to be

^{8/} Concurrent Brief of the California Cable Television Association, Applications No. 92-06-040, 042. In re: GTE and Pacific Bell Depreciation Rates, filed January 21, 1993, at 17-18.

offered. The proper resolution of this issue would be assisted by the immediate establishment of a Joint Board to resolve such questions.

Respectfully submitted,

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EXHIBIT A

**Testimony Of Terry Orr,
Pacific Bell Director, Capital And Expense Assurance**

In

**Hearing On Application No. 92-06-042
Before The California Public Utilities Commission**

Transcript p. 40

January 6, 1993

1 Q In your rebuttal testimony, Exhibit 7, page
2 10 and 11, you explain, regarding salvage value, that
3 there was an unusual or unique one-time event, that
4 is, the single sale of plant, that impacted the
5 salvage value. Did that impact two accounts?

6 A It impacted the aerial and the buried and
7 underground; it impacted all three accounts.

8 Q Can you identify the sale that took place or
9 the approximate magnitude?

10 A It was a sale involving assets of a trial in
11 Palo Alto on a cable TV trial where we sold the assets
12 to the City of Palo Alto.

13 ALJ GALVIN: Any redirect?

14 MR. BALLO: May we have a moment, your Honor?

15 ALJ GALVIN: Off the record.

16 (Off the record)

17 ALJ GALVIN: On the record.

18 REDIRECT EXAMINATION

19 BY MR. BALLO:

20 Q Mr. Orr, is it your opinion that Pacific
21 Bell's customers are demanding more digital and
22 broadband services from Pacific Bell?

23 A Absolutely.

24 Q What do you base that opinion on?

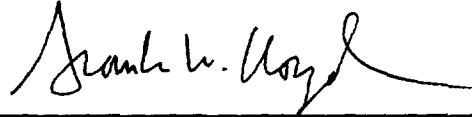
25 A The services that we currently offer that
26 provide those digital services are being purchased by
27 customers and they're being purchased in greater
28

CERTIFICATE OF SERVICE

I, Frank W. Lloyd, hereby certify that on this 21st day of May, 1993, I served a true copy of the Comments of California Cable Television Association In Support of CFA/NCTA Joint Petition For Rulemaking And Request For Establishment Of A Joint Board by first class mail, postage prepaid, upon all parties listed below.

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